

Message Text

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TAGS: EFIN, MARR, RP

SUBJECT: FORTHCOMING US/RP TAX TREATY NEGOTIATIONS: MBA HELP?

1. REFERENCE IS MADE TO FORTHCOMING US/RP TAX TREATY NEGOTIATIONS TO BE HELD IN WASHINGTON SEPT 4 TO 7. WHILE EMB RECOGNIZES THAT NORMALLY TAX TREATIES DO NOT DIRECTLY INVOLVE TAX MATTERS RELATED TO US CITIZEN PERSONNEL UNDER MILITARY BASES OR STATUS OF FORCES AGREEMENTS, THE PRESENT CIRCUMSTANCES IN PHILIPPINES RELATING TO TAX EXEMPT STATUS OF CERTAIN US CITIZEN EMPLOYEES OF THE US MILITARY ASSIGNED TO PHILIPPINES UNDER THE 1947 US/RP MILITARY BASES AGREEMENT, AS AMENDED, SHOULD NEVERTHELESS BE BROUGHT TO ATTENTION OF US NEGOTIATING PANEL.

2. UNDER ART. XII, US/RP MBA, 1947 AS AMENDED, US CITIZENS WHO ARE ASSIGNED TO THE PHILIPPINES AND ARE SOLELY HERE FOR THE DEFENSE, MAINTENANCE AND OPERATION OF THE BASES ARE TAX EXEMPT FROM PHILIPPINE INCOME TAX EXCEPT FOR INCOME DERIVED FROM PHILIPPINE SOURCES OTHER THAN THE US SOURCES. HOWEVER, PHILIPPINE AUTHORITIES BROUGHT CRIMINAL CHARGES AGAINST CERTAIN LONG TERM US CITIZEN EMPLOYEES AT SUBIC FOR FAILURE TO FILE PHIL INCOME TAX RETURNS FOR THE YEAR 1969 ON THEIR SALARIES

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RECEIVED FROM THE USG. THEY WERE SUBSEQUENTLY FOUND

GUILTY AND CASE IS NOW ON APPEAL (SEE MANILA 7624, 1973 SERIES). DISTURBING POSITION OF COURT DECISION WAS

COURT'S DEFINITION OF SOURCE OF INCOME. COURT STATED QUOTE THE WORD 'SOURCES' HAS BEEN INTERPRETED AS THE ACTIVITY, PROPERTY OR SERVICE GIVING RISE TO THE INCOME... THE SALARIES OF THE ACCUSED WERE INCOME CREATED FROM ACTIVITY OR SERVICE IN THE US NAVAL BASE. THIS ACTIVITY OR SERVICE TOOK PLACE IN THE PHILIPPINES SINCE THE US MILITARY BASES IN THIS COUNTRY ARE NOT CONSIDERED FOREIGN SOIL...THESE SALARIES (USG TREASURY CHECKS) THEREFORE, CAME FROM SOURCES WITHIN THE PHILIPPINES AND HENCE, THE ALIEN EARNING THE SAME, WHETHER RESIDENTS OR NOT, ARE REQUIRED TO FILE INCOME TAX RETURNS. UNQUOTE. SUBSEQUENTLY, WITHIN THE LAST MONTH, THE BIR HAS ISSUED TAX ASSESSMENTS FOR THE YEARS 1969, 1970 AND 1971 ON DEFENDANT'S SALARIES RECEIVED DIRECTLY FROM THE USG. THIS ASSESSMENT IS BEING ADMINISTRATIVELY APPEALED BY THE AFFECTED PARTIES. (FYI: TOLEDO OF BIR, MEMBER OF PHIL DOUBLE TAXATION TREATY PANEL, HAS INFORMED EMB ASSESSMENT ACTION TAKEN ONLY BECAUSE OFFENSES WOULD OTHERWISE PROSCRIBE. END FYI).

3. WHILE THE ENTIRE ISSUE OF TAXATION EXEMPTIONS IS ONE OF THE MAJOR POINTS TO BE RESOLVED IN THE FORTH-COMING MBA NEGOTIATIONS, THE EMBASSY NOTES THAT ART. 16 OF THE NON-RATIFIED 1964 US/RP DOUBLE TAXATION TREATY WOULD HAVE EXEMPTED SALARIES RECEIVED IN THE PHILIPPINES BY US CITIZENS FROM THE US TREASURY FOR EMPLOYMENT WITH USG AGENCIES.

4. CONSEQUENTLY, EMB BELIEVES IT IMPORTANT TO BRING TO US PANEL'S ATTENTION THE CONFUSION THAT BIR ACTIONS ARE CREATING IN RELATION TO SALARIES RECEIVED DIRECTLY FROM THE USG. THE EMB HAS MADE IT CLEAR TO GOP IN DIPLOMATIC NOTE THAT PRESENT ACTION APPEARS TO BE A VIOLATION OF ART. XII, MBA, AND, OF COURSE, WILL CONTINUE TO DISCUSS THIS WITH GOP IN CONTEXT OF MBA PROVISIONS.

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5. EMB IS AWARE THAT THE USUAL DOUBLE TAXATION TREATY CONTAINS A CLAUSE THAT SPECIFICALLY STATES PROVISIONS WILL NOT RESTRICT OR ALTER OTHER ALLOWANCES, ETC., PROVIDED BY OTHER AGREEMENTS BETWEEN THE CONTRACTING STATES. NEVERTHELESS, BECAUSE OF TORTURED, LEGALISTIC AND SOMETIMES BAFFLING REASONING EMPLOYED WITHIN PHILIPPINE BUREAUCRACY AND THEIR PENCHANT TO CONFUSE APPLES AND ORANGES, EMB ASKS US PANEL TO BEAR ABOVE FACTORS IN MIND DURING

NEGOTIATIONS AND ANY ASSISTANCE DEEMED FEASIBLE VIS A
VIS MBA TAX MATTERS SHOULD NOT BE OVERLOOKED.
SULLIVAN

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